



Testimony of Alan E. Lieberman, Member, Executive Committee  
Tax Law Section of the Connecticut Bar Association  
**Senate Bill No. 1213, *An Act Concerning the Burden of Proof in Tax Appeals***  
Finance Revenue and Bonding Committee  
March 28, 2011

Senator Daily, Representative Widlitz, and members of the Finance Revenue and Bonding Committee, thank you for the opportunity to appear and comment in support of Senate Bill No. 1213, *An Act Concerning The Burden of Proof In Tax Appeals*. My name is Alan E. Lieberman and I am a member of the Executive Committee of the Connecticut Bar Association Tax Law Section. The Section has a great interest in legislation that concerns tax appeals and the general procedural rights of taxpayers. The Tax Section of the Connecticut Bar Association **supports the passage of Senate Bill No. 1213**, and respectfully requests that the legislature **approve the bill**. Among other things, the bill would:

- Clarify that taxpayers (i.e. your constituents) would have the same burden of proving the facts in a tax appeal as would a party in an administrative hearing or civil litigation, i.e. proving their case by a "preponderance of the evidence."
- Reverse a trend in cases which have held that taxpayers must bear the burden of proving that a tax assessment is unlawful by "clear and convincing evidence," which is a much higher standard than the "preponderance of the evidence" standard employed in civil cases. In fact, the "clear and convincing evidence" standard is applicable generally only when specified by the General Assembly, such as in cases involving civil fraud or child custody.

The Department of Revenue Services has broad discretion and authority to impose assessments. There already is a presumption that the Department's action or assessment is correct, and it is up to the taxpayer to present and prove facts supporting his or her case. **To further require that a taxpayer prove those facts with "clear and convincing evidence" places an unfair and unnecessary burden upon a taxpayer seeking to assert his or her rights.** Rather, if a taxpayer chooses to appeal an assessment, it is much fairer to the taxpayer, while still protecting the interests of the state, to require the taxpayer to prove that the facts presented by the taxpayer are more likely than not in order to prevail. **This bill restores the proper balance between the Department and the taxpayer** by leaving intact the presumption that a Department's action or assessment is correct, while still requiring that the taxpayer produce greater evidence than the evidence presented by the Commissioner.

Senate Bill No. 1213 will designate **the appropriate standard** that courts should apply to cases and appeals involving Connecticut taxpayers. The CBA Tax Section respectfully urges you to support and pass Senate Bill No. 1213, *An Act The Burden of Proof In Tax Appeals*.

Thank you for the opportunity to comment on this important bill. I would be pleased to answer any questions that you may have.